

Polio and its harmful effects have been virtually eliminated in nation after nation. Presently, there are less than a handful of nations that are plagued by polio in largely isolated communities. We are on the brink of elimination of this scourge.

Mr. DOYLE. Mr. Speaker, I yield back the balance of my time.

Mr. MURPHY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. FOLEY). The question is on the motion offered by the gentleman from Pennsylvania (Mr. MURPHY) that the House suspend the rules and agree to the resolution, H. Res. 208, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. MURPHY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

PROVIDING FOR CONSIDERATION OF H.R. 6, ENERGY POLICY ACT OF 2005

Mr. SESSIONS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 219 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 219

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 6) to ensure jobs for our future with secure, affordable, and reliable energy. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour and 30 minutes, with 30 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce, and 20 minutes equally divided and controlled by the chairman and ranking minority member of each of the Committees on Science, Resources, and Ways and Means. After general debate the bill shall be considered for amendment under the five-minute rule. The bill shall be considered as read. No amendment to the bill shall be in order except those printed in the report of the Committee on Rules accompanying this resolution. Each such amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment except as specified in the report, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against such amendments are waived. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill

to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

UNFUNDED MANDATE POINT OF ORDER

Mr. MCGOVERN. Mr. Speaker, I make a point of order.

Mr. Speaker, pursuant to section 426 on the Congressional Budget Act of 1974, I make a point of order against consideration of the rule, H. Res. 219.

Page 1, line 7, through page 2, line 1, of H. Res. 219 states, "All points of order against consideration of the bill are waived." The rule makes in order H.R. 6, the Energy Policy Act of 2005, which contains a large unfunded mandate on State and local governments in violation of Section 425 of the Budget Act. Section 426 of the Budget Act specifically states that the Committee on Rules may not waive Section 425, and therefore this rule violates section 426.

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. MCGOVERN) makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974.

In accordance with section 426(b)(2) of that Act, the gentleman has met the threshold burden to identify the specific language in the resolution on which the point of order is predicated.

Under section 426(B)(4) of the act, the gentleman from Massachusetts (Mr. MCGOVERN) and the gentleman from Texas (Mr. SESSIONS) each will control 10 minutes of debate on the question of consideration.

Pursuant to section 426(b)(3) of the act, after that debate, the Chair will put the question of consideration, to wit: "Will the House now consider the resolution?"

The Chair recognizes the gentleman from Massachusetts (Mr. MCGOVERN).

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, back in 1995, my Republican colleagues, the so-called champions of States' rights, led the fight to pass the Unfunded Mandates Reform Act, a bill they claimed would stop the Federal Government from imposing the costs of federally mandated programs on States and localities.

Well, here we are 10 years later and the tables have turned. My Republican colleagues are bringing a bill to the floor that imposes a multibillion dollar unfunded mandate on communities around the country whose water supplies have been tainted by the fuel additive MTBE. This additive, a known brown water contaminant used by oil companies for nearly two decades, has seeped into our Nation's water supply. In all, MTBE has been detected in over 1,800 water systems, which serve 45 million Americans. This is the water that our constituents, our communities and our families use, and it has been contaminated with a potential human carcinogen.

Despite knowing all of this, the Republican leadership has no reservations

about shielding oil companies from any liability to the damages caused by MTBE. And then if that were not bad enough, they have included a nearly \$2 billion bailout for these same companies. So while communities will be left to cover the overwhelming costs of cleanup, not only will these oil companies get a free pass, but they will also get another kickback at the expense of taxpayers.

Here the Republican leadership is once again weighing the interests of big oil above the health and safety of our communities.

Specifically, Section 1502 of the energy bill we are talking about today creates a safe harbor for MTBE manufacturers against lawsuits that attempt to hold them accountable for the damage their product has wrought on the water supplies of communities all over the country.

As the letter the Congressional Budget Office sent to the gentleman from California (Chairman DREIER) yesterday explains, while the bill creates a safe harbor for the MTBE manufacturers, it sticks our State and local governments with a bill that could be as large as \$29 billion.

During these bad economic times, how many States and local communities can afford that?

By blocking the claims of local governments against the MTBE manufacturers, this bill will force communities to come up with hundreds of millions of dollars to clean up their water. CBO concludes that the annual cost of this mandate over the next 5 years is likely to exceed \$62 million, which accordingly triggers the unfunded mandate law Republicans so proudly backed in 1995.

The fact is that the rule waives all points of order against the bill. The Budget Act specifically says that the Committee on Rules cannot waive points of order against unfunded mandates, yet the Republican leadership blatantly ignores this.

Mr. Speaker, the House can either choose to consider this bill in spite of the bill's unfunded mandate, or it can send this bill back to committee and strike the MTBE section from the bill, eliminating the violation of this point of order. At the end of this debate, therefore, I will call for a vote on a motion to continue consideration or fix this problem.

Mr. Speaker, I reserve the balance of my time.

Mr. SESSIONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I appreciate the gentleman from Massachusetts (Mr. MCGOVERN) bringing this issue up. In fact, the issue about the MTBE liability safe harbor is part of the bill. We believe that we are responsibly dealing with a problem that exists, has existed for quite some time.

Years ago the EPA made a very clear decision about not only MTBE, they understood some of the effects of MTBE, they understood some of the

problems of MTBE, but they also understood MTBE cleans the air. It does a very effective job of making sure that the smog which we had seen in our cities, in our airways all across the United States was a huge problem and one that needed to be dealt with not only from a health perspective, but also from a perspective of the ability that we have of what we were creating as a result of emissions.

So the EPA made a decision to ensure that MTBE would be a product that would be available in gasoline, and in many instances and in many States there was a provision that required companies to put MTBE in as additives in gasoline.

We are aware that there are problems. We are aware that not because of MTBE but just as a result of storage tanks, underground storage tanks that do leak, that MTBE has been a part of that that has leaked into our underground water sources.

Parties that are responsible for those tanks have paid almost 95 percent of the underground storage tank cleanup according to the EPA. And we recognize that there are many other sites where this is still a problem, where cleanup is needed, where cleanup would be involved.

Today what we are asking is part of this wonderful energy bill. We are asking to make sure that we will limit the liability, a safe harbor for those people who have been a part of this so that we can clean up these storage tanks and we can move on.

There is more than \$850 million in what is called a LUST Fund that has been set aside in this bill that will help communities to clean up, to work with those people who own those storage tanks, to clean up the groundwater, to clean up the contaminants and to clean up the problem.

But the fact of the matter is that MTBE by itself is simply not necessarily a problem. And under the Federal Rules of Evidence and under the many statutes that are being claimed in lawsuits, they are calling this a defective product. MTBE is not a defective product. We knew from the EPA and we understood what MTBE was, the problems that were associated with it; and the EPA has never labeled it as a carcinogenic. It is still being utilized today because it does a great job of cleaning up smog.

So what we are attempting to do in this bill is to make sure that we move forward with the problem, provide money, but let us move on with this country in going straight to the clean-up.

We support, I support what is in the energy bill. I appreciate all of my colleagues voting in support of this, not only the MTBE provision, but also the bill.

Mr. Speaker, I reserve the balance of my time.

□ 1245

Mr. MCGOVERN. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Mrs. CAPPS).

Mrs. CAPPS. Mr. Speaker, I thank the gentleman from Massachusetts for raising this point of order. I believe that it goes right to the heart of the problem with the MTBE provisions in this bill. They pass on huge costly problems to other parties.

In this case, H.R. 6 would shift the costs of cleaning up MTBE groundwater contamination on to the towns, the cities, and the water districts around this country. In other words, it would shift these cleanup costs from the oil companies responsible for the mess to our constituents, who have to live with the mess.

Mr. Speaker, MTBE has caused damage to the groundwater across our Nation. It is found in 1,861 different water systems, 29 different States, serving 45 million people. Cleanup costs are estimated at around 29, maybe \$30 billion. I might point out to my colleagues that there are about \$2 billion in the LUST fund, and it is to cover all kinds of leakage, not just MTBE.

This is a huge problem, and it is not going away. It is the fault of the MTBE industry, and they should have to fix it.

Mr. Speaker, the MTBE industry says it was forced to put MTBE in gasoline by the Clean Air Act amendments of 1990. There is no MTBE mandate in that law. Even the chairman of the Committee on Energy and Commerce has acknowledged that.

Industry representatives have testified before Congress that MTBE has been widely used since 1979. This is an ARCO circular from around the 1980s urging refiners to add MTBE. By the time of the 1990 Clean Air amendments, the industry had already added 120 million barrels of MTBE to gasoline.

Even more damning are the documents unearthed in recent court cases proving conclusively that the industry knew as early as the 1980s about the dangers MTBE posed to groundwater. It still went on adding it to gasoline. The special protection for MTBE manufacturers is in this bill because they are finally being taken to task for the damages they knowingly caused.

Recent court cases regarding responsibility for MTBE groundwater contamination have come down on the side of local water companies and cities. These cases have forced manufacturers to pay to clean up or replace MTBE-contaminated water supplies. The most celebrated has been the \$60 million settlement for south Lake Tahoe and the nearly \$400 million for Santa Monica.

In my district, the tiny little coastal town of Cambria had one of its two drinking water sources permanently damaged by MTBE. After it sued, Cambria was able to get Chevron to pay a \$9 million settlement to help the town to build a desalinization plant; but under this bill, the taxpayers of Cambria, and of hundreds of towns, large and small, across this country would be forced to pay for the MTBE cleanup on their own.

Mr. Speaker, the gentleman from Massachusetts (Mr. MCGOVERN) is right

to raise this point of order. We should support the point of order and take this terrible provision out, which is going to force our constituents to shoulder the burden of cleanup on to the constituents.

Mr. SESSIONS. Mr. Speaker, I am proud to yield 5 minutes to the gentleman from Texas (Mr. BARTON), the chairman of the Committee on Energy and Commerce, who is an expert on this issue.

(Mr. BARTON of Texas asked and was given permission to revise and extend his remarks.)

Mr. BARTON of Texas. Mr. Speaker, of all the things to come on the floor of the House of Representatives and claim with a straight face that we should have a debate about, claiming that what is in the bill with regards to the MTBE is an unfunded mandate, is one of the biggest whoppers I can imagine, with all due respect.

I want to read some of the language of the bill, and I have to put my reading classes on to do it.

We specifically authorize in the bill additional funding, \$50 million, to avoid the creation of unfunded mandates. It is in the bill, a specific allocation of \$50 million to avoid the creation of unfunded mandates.

The Leaking Underground Storage Trust fund has a balance right now of \$2 billion. The bill before us dedicates some of that balance specifically to go out and inspect existing underground storage tanks, to enforce if those inspections find that there is a leak, and to fund improvements in the operation of these underground storage tank programs. It is in the bill. That is not an unfunded mandate. If anything, it is a specific allocation in the bill to enforce the program that we have, to put additional funds into it and to make sure that we prevent the problem. That is funded. That is not unfunded.

Now, the real debate is not whether it is an unfunded mandate or not. The real debate is what we should do about MTBE; and as my good friend, the gentleman from Texas (Mr. SESSIONS), has already pointed out, we can have a legitimate policy debate about that. The bill allows States that want to ban MTBE to do it. That is not mandating the States. That is telling the States, you want to use MTBE in your gasoline supply to get cleaner air, fine. You do not want to use it, that is fine, too.

The bill also has a provision in it that over the course of the next, I think, 10 years, depending on some scientific studies and various things, there could be a point in time that we have a Federal ban on MTBE. It may not, it may, but it could happen.

People forget in the 1991 Clean Air amendments we required an oxygen amendment to make the gasoline burn cleaner in nonattainment areas. There were two ways to do that at the time: use ethanol or use MTBE. There was not a mandate to use MTBE, but there was a requirement in nonattainment areas you had to do something in terms

of putting more oxygen in the gasoline to make it burn cleaner. Most of the market went to MTBE.

We then found out, and we knew before the fact actually, that if the gasoline that had MTBE leaked out into the environment that the MTBE would disassociate a little bit quicker because it was more missable, and it would get into the water supply, or water table, and it causes an odor. So there have been a number of lawsuits. The gentlewoman mentioned two of them, in Lake Tahoe, one in California, where there have been out-of-court settlements for several millions of dollars because of that odor. That did not establish that MTBE is a defective product.

This bill does have a safe harbor, not just for MTBE but also for ethanol, that by definition of the product, the chemical composition, that it is not defective; but if you use it negligently, you can be sued upon it. If the right warnings are not with it, you can be sued. There are all kinds of reasons. You can sue and win, as has been shown; but that does not mean that it in and of itself is defective.

Interestingly enough, in one of the cases the gentlewoman from California quoted, the amount of the settlement was less than the legal fees that the law firm representing the community in California claimed. So that community is now suing their law firm, saying you ripped us off, you are asking for more money to settle the suit than we got to clean the water up.

Mr. MCGOVERN. Mr. Speaker, I yield myself 30 seconds.

(Mr. MCGOVERN asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. MCGOVERN. Mr. Speaker, let me respond to my colleague, the gentleman from Texas (Mr. BARTON), and simply say this is an unfunded mandate. The CBO says so. Here is the letter we received yesterday, and it says very clearly that this is an unfunded mandate.

I know my colleagues all have great confidence in the CBO. My colleague, the gentleman from Texas (Mr. SESSIONS), made the following statement on CBO just a few months ago. He said, the Congressional Budget Office is a

professional organization that assists the United States Congress in knowing in a nonpartisan way those impacts on the laws that we pass.

Well, here it is in black and white. CBO says this is an unfunded mandate, and people need to understand that if they do not vote for what we are saying here today, they are supporting an unfunded mandate.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 19, 2005.
Hon. DAVID DREIER,
Chairman, Committee on Rules, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Based on a preliminary review of H.R. 6, the Energy Policy Act of 2005, as introduced in the House of Representatives on April 18, 2005, CBO estimates that enacting this legislation would reduce direct spending by \$1.1 billion over the 2006–2010 period and by \$0.4 billion over the 2006–2015 period. CBO and the Joint Committee on Taxation estimate that the legislation would reduce revenues by \$4.0 billion over the 2006–2010 period and by \$7.9 billion over the 2006–2015 period. The estimated direct spending and revenue effects are summarized below. A table with additional details is attached.

By fiscal year, in millions of dollars—											
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Estimated Budget Authority	0	221	509	–1,640	211	–331	146	139	141	139	62
Estimated Outlays	0	196	424	–1,605	221	–311	166	139	141	139	62
Estimated Revenues ¹	163	–272	–1,175	–1,227	–707	–655	–673	–714	–761	–820	–865

¹ The JCT estimate assumes the bill will be enacted by July 1, 2005. CBO's estimate assumes enactment near the end of fiscal year 2005.
Sources: CBO and Joint Committee on Taxation (JCT).

Implementing this legislation also would affect spending subject to appropriation action, but CBO has not completed an estimate of the potential discretionary costs.

H.R. 6 contains numerous mandates as defined in the Unfunded Mandates Reform Act (UMRA) that would affect both intergovernmental and private-sector entities. Based on our review of the bill, CBO expects that the mandates (new requirements, limits on existing rights, and preemptions) contained in the bill's titles on motor fuels (title XV), nuclear energy (title VI), electricity (title XII) and energy efficiency (title I) would have the greatest impact on State and local governments and private-sector entities.

CBO estimates that the cost of complying with intergovernmental mandates, in aggregate, could be significant and likely would exceed the threshold established in UMRA (\$62 million in 2005, adjusted annually for inflation) at some point over the next five years because we expect that future damage awards for state and local governments under the bill's safe harbor provision (title XI) would likely be reduced. As explained below, that provision would shield the motor fuels industry from liability under certain conditions.

Section 1502 would shield manufacturers of motor fuels and other persons from liability for claims based on defective product relating to motor vehicle fuel containing methyl tertiary butyl ether or renewable fuel. That protection would be in effect as long as the fuel is in compliance with other applicable

federal requirements. The provision would impose both an intergovernmental and private-sector mandate as it would limit existing rights to seek compensation under current law. (The provision would not affect other causes of action such as nuisance or negligence.)

Under current law, plaintiffs in existing and future cases may stand to receive significant amounts in damage awards, based, at least in part, on claims of defective product. Because section 1502 would apply to all such claims filed on or after September 5, 2003, it would affect more than 100 existing claims filed by local communities, states, and some private companies against oil companies. Individual judgments and settlements for similar lawsuits over the past several years have ranged from several million dollars to well over \$100 million. Based on the size of damages already awarded and on information from industry experts, CBO anticipates that precluding existing and future claims based on defective product would reduce the size of judgments in favor of state and local governments over the next five years. CBO estimates that those reductions would exceed the threshold established in UMRA in at least one of those years. Because significantly fewer such cases are pending for private-sector claimants, CBO does not have a sufficient basis for estimating expected reductions in damage awards for the private sector.

CBO cannot determine whether the aggregate cost of the private-sector mandates in

the bill would exceed the threshold established in UMRA primarily for two reasons. First, some of the requirements established by the bill would hinge on future regulatory action for which information is not available. Second, UMRA does not specify whether CBO should measure the cost of extending a mandate relative to the mandate's current costs or assume that the mandate will expire and measure the costs of the mandate's extension as if the requirement were new. The bill would extend the existing mandate that requires licensees to pay fees to offset roughly 90 percent of the Nuclear Regulatory Commission's annual appropriation. Measures against the costs that would be incurred if current law remains in place, the cost to the private sector of extending this mandate would exceed the annual threshold established in UMRA (\$123 million in 2005, adjusted annually for inflation).

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lisa Cash Driskill, (for federal costs), who can be reached at 226–2860, Theresa Gullo (for intergovernmental mandates), who can be reached at 225–3220, and Patrice Gordon (for private-sector mandates), who can be reached at 226–2940.

Sincerely,
DOUGLAS HOLTZ-EAKIN,
Director.

Attachment.

ESTIMATED EFFECTS ON DIRECT SPENDING AND REVENUES FOR H.R. 6

By fiscal year, in millions of dollars—											
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN DIRECT SPENDING											
Title I—Energy Efficiency:											
Estimated Budget Authority	0	0	300	200	0	0	0	0	0	0	0

ESTIMATED EFFECTS ON DIRECT SPENDING AND REVENUES FOR H.R. 6—Continued

	By fiscal year, in millions of dollars—										
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Estimated Outlays	0	0	255	215	30	0	0	0	0	0	0
Title VI—Nuclear Matters:											
Estimated Budget Authority	0	64	0	0	0	0	0	0	0	0	0
Estimated Outlays	0	64	0	0	0	0	0	0	0	0	0
Title IX—Research and Development:											
Estimated Budget Authority	0	50	50	50	50	50	50	50	50	50	50
Estimated Outlays	0	25	50	50	50	50	50	50	50	50	50
Title XII—Electricity:											
Estimated Budget Authority	0	50	100	50	100	50	50	50	50	50	50
Estimated Outlays	0	50	60	70	80	70	70	50	50	50	50
Title XVIII—Geothermal Energy:											
Estimated Budget Authority	0	2	2	2	2	2	2	2	2	2	2
Estimated Outlays	0	2	2	2	2	2	2	2	2	2	2
Title XX—Oil and Gas:											
Estimated Budget Authority	0	54	56	57	59	66	44	37	39	37	34
Estimated Outlays	0	54	56	57	59	66	44	37	39	37	34
Title XXI—Coal:											
Estimated Budget Authority	0	1	1	1	1	1	1	1	1	1	1
Estimated Outlays	0	1	1	1	1	1	1	1	1	1	1
Title XXII—Arctic National Wildlife Refuge:											
Estimated Budget Authority	0	0	0	–2,000	–1	–500	–1	–1	–1	–1	–75
Estimated Outlays	0	0	0	–2,000	–1	–500	–1	–1	–1	–1	–75
Total:											
Estimated Budget Authority	0	221	509	–1,640	211	–331	146	139	141	139	62
Estimated Outlays	0	196	424	–1,605	211	–311	166	139	141	139	62
NET CHANGES IN REVENUES											
Title XII—Electricity	0	38	38	38	38	38	38	38	38	38	38
Title XIII—Energy Tax Incentives ¹	163	–310	–1,213	–1,265	–745	–693	–711	–752	–799	–858	–903
Total	163	–272	–1,175	–1,227	–707	–655	–673	–714	–761	–820	–865

¹ The JCT estimates the bill will be enacted by July 1, 2005. CBO's estimates assume enactment near the end of fiscal year 2005.

Source: Joint Committee on Taxation and CBO.

Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. COSTA).

(Mr. COSTA asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. COSTA. Mr. Speaker, I want to thank the gentleman from Massachusetts for raising this point of order.

When the current majority took over the control of the Congress, one of their first actions was to pass the Unfunded Mandated Reform Act; and as a State legislator, I applauded their efforts because it was appropriate and fitting. The bipartisan legislation provided a funding cap that Congress could impose on States and local governments.

Mr. Speaker, here, today, I believe that we are breaking that commitment to our local governments and to communities if we pass this energy bill without moving to strike the legislation to MTBE. Unless we impose a spending cap, we are imposing too great of a financial burden on local government that is already hard pressed throughout our country.

There is no doubt that the MTBEs pose a significant environmental health threat to our communities. If released into the water table, a small portion of MTBEs can ruin a community's supply of drinking water. In addition, exposure to this has resulted, as we know, in a number of cases of cancer, birth defects, and other illnesses.

Mr. Speaker, it is also evident that the legislation, I believe, is a direct violation of the Unfunded Mandated Reform Act. The MTBE provisions presented in the energy bill would restrict the existing rights of States and communities to seek compensation under the law. The same provisions would impose larger financial costs of the cleanup of those communities throughout our country; and notwithstanding the argument of a Member of \$50 million, that is but the tip of the iceberg.

Approximately half the Members of our House have served in our State legislatures. I was a past president of the National Conference of State Legislatures. I will enter into the RECORD at the end of my statement their opinion, in fact, that this is a violation of the Unfunded Mandates Act that they, too, supported in the mid-1990s when the majority enacted this very important piece of legislation.

For my own district, the 20th district in California, we believe the costs could exceed \$150 million because of the large number of sites that we have. This bill eliminates my district's ability to hold producers liable for the problem and help them assist in cleaning up. On top of this, I believe that this does little to deal with the threats.

I urge that we support the point of order of the gentleman from Massachusetts.

NATIONAL CONFERENCE OF
STATE LEGISLATURES,

Re H.R. 6—Unfunded Mandates

April 20, 2005.

Hon. JOE BARTON,
Chairman, House Energy and Commerce Committee, Washington, DC.

Hon. DAVID DREIER,
Chairman House Rules Committee, Washington, DC.

Hon. JOHN DINGELL,
House Energy and Commerce Committee, Washington, DC.

Hon. LOUISE SLAUGHTER,
House Rules Committee, Washington, DC.

DEAR REPRESENTATIVES: The National Conference of State Legislatures urges you to support a point of order against H.R. 6 for its inclusion of unfunded federal mandates that would be imposed on state and local governments with the adoption of this legislation. NCSL further urges you to strike those sections that include these unfunded mandates that exceed the Unfunded Mandates Reform Act threshold as identified by the Congressional Budget Office's preliminary review of H.R. 6, The Energy Policy Act of 2005.

During the 108th Congress, unfunded federal mandates exceeding \$51 billion were imposed on state and local governments. The House's FY2006 Budget Resolution, H. Con. Res. 95, would impose unfunded mandates of over \$30 billion in FY2006 alone if adopted by a conference committee. The unfunded mandates proposed in H.R. 6 would serve to worsen what already is an unacceptable situation.

Thank you for your consideration of our concerns and we are hopeful you will vote not to impose further unfunded mandates on state and local governments.

Respectfully,

REPRESENTATIVE JOE HACKNEY,
*North Carolina House of Representatives,
Chair, NCSL Standing Committees*
SENATOR BEVERLY GARD,
*Indiana State Senate, Vice Chair, NCSL
Standing Committees*

The SPEAKER pro tempore (Mr. FOLEY). The gentleman from Texas (Mr. SESSIONS) has 1 minute remaining. The gentleman from Massachusetts (Mr. MCGOVERN) has 1½ minutes remaining. The gentleman from Texas has the right to close.

Mr. MCGOVERN. May I ask the gentleman from Texas how many other speakers he has.

Mr. SESSIONS. Mr. Speaker, yes. I appreciate the gentleman asking. I will be closing, so if the gentleman would please proceed.

Mr. MCGOVERN. Mr. Speaker, I yield my remaining time of 1½ minutes to the gentleman from California (Mr. GEORGE MILLER).

Mr. GEORGE MILLER of California. Mr. Speaker, I thank the gentleman for yielding me time, and I rise in strong support of this point of order.

Simply saying in the legislation that this is not an unfunded mandate does not make the fact that it is not an unfunded mandate. Failure to provide the resources by which the directed activity is required under the law is what makes it an unfunded mandate.

We have communities throughout California that have had environmental and economic havoc wreaked

upon them from the use of MTBE, in many instances, as the gentlewoman from California (Mrs. CAPPS) pointed out, after the knowledge was available and was continued to pursue the use of this compound as an additive to the fuels of our automobiles.

Those communities now are stuck with the costs of either cleaning up that drinking water supply, finding an alternative source and dealing with it, and they must do so. To suggest now that we are going to provide a safe harbor, that we are going to restrict the liability or prohibit the liability from those who knew of the dangers of this to our environment, to our drinking water supplies, to our citizens, and on the other hand, we are going to direct communities to clean this up when, in fact, the resources will not be available to do that, they are not there at the local level, and they are not forthcoming from the United States.

MTBE is just another way in which this Congress, this Republican leadership, wants to corrupt the process by which these communities can be made whole. They want to corrupt the process by which these companies can be protected from the liability that they assumed when they knowingly did that. It is just a continued process of corruption of the process of this Congress that we cannot deal with this straight up.

□ 1300

Mr. SESSIONS. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, we have already heard the chairman of the Committee on Energy and Commerce tell us how this trust fund, the LUST Trust Fund, has \$2 billion that has been set aside, that is waiting for this issue, for cleanup of MTBE. We heard very clearly that some almost \$1 billion more will be added to the bill to make sure that we address this issue.

MTBE is not a defective product. MTBE does a very good job at what it is supposed to do, and that is clean the air.

Today and tomorrow this House will be considering the energy bill. I think it is time for us to move forward. I urge each of my colleagues to vote "yes," that we will continue the debate on the rule today.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. FOLEY). All time for debate has expired.

Pursuant to section 426(b)3 of the Congressional Budget Act of 1974, the Chair will now put the question of consideration.

The question is, Will the House now consider House Resolution 219?

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. SESSIONS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

THE SPEAKER pro tempore. Pursuant to clause 8 and 9 of rule XX, this 15-

minute vote on consideration of House Resolution 219 will be followed by two 5-minute votes; suspending the rules and agreeing to House Concurrent Resolution 126, and suspending the rules and agreeing to House Resolution 208.

The vote was taken by electronic device, and there were—yeas 231, nays 193, not voting 10, as follows:

[Roll No. 112]

YEAS—231

Aderholt	Gillmor	Norwood
Akin	Gingrey	Nunes
Alexander	Gohmert	Nussle
Bachus	Gonzalez	Ortiz
Baker	Goode	Osborne
Barrett (SC)	Goodlatte	Otter
Bartlett (MD)	Granger	Oxley
Barton (TX)	Graves	Paul
Bass	Green (WI)	Pearce
Bean	Green, Gene	Pence
Beauprez	Gutknecht	Peterson (PA)
Biggart	Hall	Petri
Bilirakis	Harris	Pickering
Bishop (UT)	Hart	Pitts
Blackburn	Hastings (WA)	Platts
Blunt	Hayes	Poe
Boehert	Hayworth	Pombo
Boehner	Hefley	Porter
Bonilla	Hensarling	Price (GA)
Bonner	Herger	Pryce (OH)
Bono	Hinojosa	Putnam
Boozman	Hobson	Radanovich
Boustany	Hoekstra	Ramstad
Bradley (NH)	Hostettler	Regula
Brady (TX)	Hulshof	Rehberg
Brown (SC)	Hunter	Reichert
Brown-Waite,	Hyde	Renzi
Ginny	Inglis (SC)	Reyes
Burgess	Issa	Reynolds
Burton (IN)	Istook	Rogers (AL)
Buyer	Jenkins	Rogers (KY)
Calvert	Jindal	Rogers (MI)
Camp	Johnson (CT)	Rohrabacher
Cannon	Johnson (IL)	Ros-Lehtinen
Cantor	Johnson, Sam	Royce
Capito	Jones (NC)	Ryan (WI)
Carter	Keller	Ryun (KS)
Castle	Kennedy (MN)	Saxton
Chabot	King (IA)	Schwarz (MI)
Chocola	King (NY)	Sensenbrenner
Coble	Kingston	Sessions
Cole (OK)	Kirk	Shadegg
Conaway	Kline	Shaw
Cox	Knollenberg	Shays
Crenshaw	Kolbe	Sherwood
Cubin	LaHood	Shimkus
Culberson	Latham	Shuster
Cunningham	LaTourrette	Simmons
Davis (KY)	Leach	Simpson
Davis, Jo Ann	Lewis (CA)	Smith (NJ)
Davis, Tom	Lewis (KY)	Smith (TX)
Deal (GA)	Linder	Sodrel
DeLay	LoBiondo	Souder
Dent	Lucas	Stearns
Diaz-Balart, M.	Lungren, Daniel	Sullivan
Doolittle	E.	Tancredo
Drake	Mack	Taylor (NC)
Dreier	Manzullo	Terry
Duncan	Marchant	Thomas
Ehlers	McCauley (TX)	Thornberry
Emerson	McCotter	Tiahrt
English (PA)	McCrery	Tiberi
Everett	McHenry	Turner
Feeney	McHugh	Upton
Ferguson	McKeon	Walden (OR)
Fitzpatrick (PA)	McMorris	Walsh
Flake	Melancon	Wamp
Foley	Mica	Weldon (FL)
Forbes	Miller (FL)	Weldon (PA)
Fortenberry	Miller (MI)	Weller
Fossella	Miller, Gary	Westmoreland
Franks (AZ)	Moran (KS)	Whitfield
Frelinghuysen	Murphy	Wicker
Gallegly	Musgrave	Wilson (NM)
Garrett (NJ)	Myrick	Wilson (SC)
Gerlach	Neugebauer	Wolf
Gibbons	Ney	Young (AK)
Gilchrest	Northup	

NAYS—193

Abercrombie	Baca	Becerra
Ackerman	Baird	Berkley
Allen	Baldwin	Berman
Andrews	Barrow	Berry

Bishop (GA)	Holt	Pallone
Bishop (NY)	Honda	Pascarell
Blumenauer	Hooley	Pastor
Boren	Hoyer	Payne
Boswell	Inslee	Pelosi
Boucher	Israel	Peterson (MN)
Boyd	Jackson (IL)	Pomeroy
Brady (PA)	Jackson-Lee	Price (NC)
Brown (OH)	(TX)	Rahall
Brown, Corrine	Jefferson	Rangel
Butterfield	Johnson, E. B.	Ross
Capps	Jones (OH)	Rothman
Capuano	Kanjorski	Roybal-Allard
Cardin	Kaptur	Ruppersberger
Cardoza	Kildee	Rush
Carnahan	Kilpatrick (MI)	Ryan (OH)
Carson	Kind	Sabo
Chandler	Kucinich	Salazar
Clay	Langevin	Sánchez, Linda
Cleaver	Lantos	T.
Clyburn	Larsen (WA)	Sanchez, Loretta
Conyers	Larson (CT)	Sanders
Cooper	Lee	Schakowsky
Costa	Levin	Schiff
Costello	Lewis (GA)	Schwartz (PA)
Cramer	Lipinski	Scott (GA)
Crowley	Lofgren, Zoe	Scott (VA)
Cuellar	Lowe	Serrano
Cummings	Lynch	Sherman
Davis (AL)	Maloney	Skelton
Davis (CA)	Markey	Slaughter
Davis (FL)	Marshall	Smith (WA)
Davis (IL)	Matheson	Snyder
Davis (TN)	Matsui	Solis
DeFazio	McCarthy	Spratt
Delahunt	McCollum (MN)	Stark
DeLauro	McDermott	Strickland
Dicks	McGovern	Stupak
Dingell	McIntyre	Tanner
Doggett	McKinney	Tauscher
Doyle	McNulty	Taylor (MS)
Edwards	Meehan	Thompson (CA)
Emanuel	Meek (FL)	Thompson (MS)
Engel	Meeks (NY)	Tierney
Eshoo	Menendez	Towns
Etheridge	Michaud	Udall (CO)
Evans	Millender	Udall (NM)
Farr	McDonald	Van Hollen
Fattah	Miller (NC)	Velázquez
Filner	Miller, George	Visclosky
Ford	Mollohan	Wasserman
Frank (MA)	Moore (KS)	Schultz
Gordon	Moore (WI)	Waters
Green, Al	Moran (VA)	Watson
Grijalva	Murtha	Watt
Gutierrez	Nadler	Waxman
Harman	Napolitano	Weiner
Hastings (FL)	Neal (MA)	Wexler
Herseth	Oberstar	Woolsey
Higgins	Obey	Wu
Hinchey	Olver	Wynn
Holden	Owens	

NOT VOTING—10

Case	Kelly	Sweeney
DeGette	Kennedy (RI)	Young (FL)
Diaz-Balart, L.	Kuhl (NY)	
Foxx	Portman	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. FOLEY) (during the vote). Members are advised 2 minutes remain in this vote.

□ 1327

Messrs. PEARCE, SMITH of Texas, ORTIZ, REYES and Ms. BEAN changed their vote from "nay" to "yea."

So the question of consideration was decided in the affirmative.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Ms. FOXX. Mr. Speaker, on rollcall No. 112 I was unavoidably detained. Had I been present, I would have voted "yea."

Stated against:

Ms. BEAN. Mr. Speaker, on rollcall No. 112, I cast a vote of "yea" which should have been "nay." It is my wish to correct this matter for the record. Had I been present, I would have voted "no."